

REMARKS

The present Amendment is filed in response to the Office Action dated March 15, 2010 ("the Action"). Claim 35 is amended. Claims 7, 9, and 21-34 remain canceled, and claims 51-61 remain withdrawn. Therefore, claims 1-6, 8, 10-20, and 35-62 are pending in the present application. No new matter is presented by way of the present amendments. Applicants' remarks relating to the pending claims and the outstanding Action are set forth below.

As an initial matter, Applicants respectfully thank the Examiner for conducting a telephone interview with Applicants' undersigned Attorney on June 10, 2010. During the interview, independent claims 1 and 62 were discussed with regard to the prior art and the support for such claims in the present application. The Examiner agreed during the interview that independent claims 1 and 62 are allowable over the rejections set forth in the Action. It was suggested that Applicants submit the present Amendment to enter the substance of the interview into the record and to attend to the other minor issues noted below. Applicants respectfully thank the Examiner for her willingness to conduct the interview.

In the Action, the Examiner objected to claim 35 for omitting a word. Claim 35 is herein amended to recite "An apparatus" as suggested by the Examiner. Accordingly, Applicants respectfully submit that the objection to claim 35 is overcome.

Further in the Action, the Examiner rejected claims 1-6, 17, 18, 35-43, 47-49, and 62 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,602,263 to Swanson *et al.* ("Swanson"), and claims 19-20 under 35 U.S.C. § 103(a) as being unpatentable over Swanson in view of U.S. Patent No. 6,273,912 to Scholz *et al.* ("Scholz"). In Applicants' previous response, claim 1 was amended to recite:

"the body having a constrained condition and an expanded condition, the distal portion in the constrained condition having a first configuration and the proximal portion in the constrained condition having a first configuration in which the plurality of annularly spaced body fingers extend substantially parallel to the longitudinal axis, and the distal portion in the expanded condition having the first configuration and the proximal portion in the expanded condition having a second configuration in which the plurality of annularly spaced body fingers extend generally radially outward from the longitudinal axis."

Thus, the distal portion of the body remains in its first configuration whether the body is in its constrained or expanded condition. The proximal portion of the body, on the other hand, is in a first configuration in the constrained condition and in a second configuration in the expanded condition. Support for claim 1 is found throughout the present application, and particularly in FIGS. 8-10 and paragraphs **[0087]** and **[0088]**. The Examiner agreed during the interview that these portions of the application do indeed support the limitations recited in claim 1.

Rejecting independent claim 1 in the Action, the Examiner referenced FIGS. 2 and 3 of *Swanson* as disclosing a constrained and expanded position, respectively. It was the Examiner's contention that end portions 224 of proximal members 222 were constrained in FIG. 2 and expanded in FIG. 3, whereas the distal end remained the same. As discussed during the interview, however, FIG. 3 of *Swanson* simply discloses proximal members

222, and distal members 218 for that matter, as elements of connector structure 200 that extend outwardly to engage a portion of tissue. Such members 218 and 222 are *both* extended outward in FIG. 3, and are put in such configuration by prying them into position. (See *Swanson* col.7, 1.43 - col.8, 1.14.) *Swanson* is more particularly directed to connector structure 200 having first and second cells 202 and 204 that are *both* designed for annular expansion to permit annular enlargement of the *entire* connector structure 200. (See *Swanson* col.7, 11.47-49 and col.8, 11.25-27.) Thus, as *Swanson* teaches a stent that expands at both its proximal and distal ends, the Examiner agreed during the interview that independent claim 1 is distinguished over *Swanson* without further amendment.

The Examiner also rejected independent claim 62 in the Action as being anticipated by *Swanson*. Claim 62 recites that the annular element of the distal portion of the body is "continuous in a plane orthogonal to the longitudinal axis" of the body. Support for such limitation is found throughout the present application, and particularly in FIGS. 8-10 and paragraphs **[0087]** and **[0088]**. The Examiner agreed during the interview that these portions of the application do indeed support the limitations recited in claim 62. As discussed above, *Swanson* clearly teaches a connector structure 200 having first and second cells 202 and 204 that are *both* designed for annular expansion to permit annular enlargement of the *entire* connector structure 200. According to these teachings and a review of FIGS. 2 and 3 of *Swanson*, it is evident that *Swanson* does not teach or suggest connector structure 200 having a continuous annular element in a plane orthogonal to the longitudinal axis of structure 200. To constrain structure 200 in the manner recited in claim 62 of the present application would indeed be against teaching of *Swanson* to permit annular enlargement of the *entire* connector structure 200. Thus, the

Examiner agreed during the interview that independent claim 62 is distinguished over *Swanson* without further amendment.

In view of the foregoing, Applicants submit that independent claims 1 and 62 patentably distinguish over the prior art of record. Accordingly, allowance of claims 1 and 62 is respectfully requested.

Given that claims 2-6, 8, 10-20, and 35-50 properly depend from independent claim 1, such claims are also believed to be allowable. Nevertheless, it is also noted that such claims are believed to include additional patentable subject matter beyond that found solely in independent claim 1. With respect to claims 19-20, *Scholz* does not overcome the deficiencies of *Swanson* noted above. Applicants note that the Examiner has indicated that the subject matter of dependent claims 8, 10-16, 44-46, and 50¹ is allowable. Accordingly, Applicants respectfully request allowance of claims 2-6, 8, 10-20, and 35-50.

In addition, Applicants note that withdrawn claims 51-61 also properly depend from independent claim 1 and are thus believed to be allowable. Nevertheless, such claims are believed to include additional patentable subject matter beyond that found solely in independent claim 1. Accordingly, Applicants respectfully request that the Examiner rejoin and allow claims 51-61. In a brief telephone discussion between Applicants' undersigned Attorney and the Examiner on June 14, 2010, the Examiner agreed that claims 51-61 indeed appear to be allowable.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

¹ The Examiner indicated that claims 8-16, 44-46, and 50 include allowable subject matter, although Applicants note that claim 9 is canceled.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' Attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 15, 2010

Respectfully submitted,
Electronic signature:
/Charles H. Humkey/
Charles H. Humkey
Registration No.: 60,702
LERNER, DAVID, LITTENBERG,
KRUMLHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants

1206799_1.DOC